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No. 03-895

In the Supreme Court of the United States

WALTER ROSALES, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-4a) is unreported. The opinion of the district court (App., *infra*, 1a-21a) is unreported.[1] The opinion of the district court denying petitioners' motion for reconsideration (Pet. App. 5a-17a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on August 11, 2003. A petition for rehearing was denied on September 19, 2003 (Pet. App. 18a). The petition for a writ of certiorari was filed on December 18, 2003. The

[1] The district court's opinion, which was omitted from petitioners' appendix, is appended to this brief.

jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Petitioners Walter Rosales, et al., claim that the grant of 4.66 acres of land (the Parcel) to the United States "in trust for such Jamul Indians as the Secretary may designate" constituted an "allotment" of the land to them, so that the land is owned by them as individual Jamul Indians rather than by the Jamul Indian Village (Village), a federally recognized Tribe. The district court granted summary judgment for the United States because, *inter alia*, the Village, rather than petitioners, is the beneficial owner of the Parcel. App., *infra*, 19a-20a. The court of appeals affirmed on the ground that the Village is an indispensable party under Federal Rule of Civil Procedure 19. Pet. App. 1a-4a.

1. a. In 1887, Congress enacted the Indian General Allotment Act (also known as the Dawes Act), ch. 119, 24 Stat. 388 (25 U.S.C. 331 *et seq.*), which empowered the President to allot tribal lands to individual Indians. Under the General Allotment Act, a parcel was allotted and to be held in trust for 25 years, after which time a fee patent would issue to the Indian allottee, who could then sell it to non-Indians. 25 U.S.C. 348; see generally *United States* v. *Mitchell*, 445 U.S. 535, 543-544 (1980).

The General Allotment Act and subsequent amendments provided for allotments from several sources. Section 1 authorized the President to make allotments to individual Indians from Indian reservation lands. 25 U.S.C. 331 (1994), repealed by Indian Land Consolidation Act Amendments of 2000, Pub. L. No. 106-462, Tit. I, § 106(a)(1), 114 Stat. 2007. Section 4 permitted Indians not residing on a reservation to settle on "any surveyed or unsurveyed lands of the United States not

otherwise appropriated"—in other words, public domain land—and to have the land allotted to them in the same manner as reservation land could be allotted. 25 U.S.C. 334. Subsequent amendments authorized the Secretary of the Interior to make allotments within national forests to certain Indians occupying such land. 25 U.S.C. 337.

The process of patenting an allotment to an Indian occurred in two steps. Upon approving an allotment, the Secretary issued a trust patent, declaring that the United States held the allotted land in trust for 25 years for the sole use and benefit of the Indian to whom the allotment was made, or his successors. 25 U.S.C. 348. At the expiration of the trust period, the Secretary conveyed a fee patent for the allotment to the Indian owner. 25 U.S.C. 348.

b. In 1934, Congress repudiated the practice of allotment with the enactment of the Indian Reorganization Act (IRA), ch. 576, 48 Stat. 984 (25 U.S.C. 461 *et seq.*). See *Atkinson Trading Co.* v. *Shirley*, 532 U.S. 645, 650 n.1 (2001); *County of Yakima* v. *Confederated Tribes & Bands of the Yakima Indian Nation*, 502 U.S. 251, 255 (1992). The IRA halted further allotments of Indian reservation lands and extended indefinitely the period during which allotments would be held in trust by the United States. See 25 U.S.C. 461, 462; *County of Yakima*, 502 U.S. at 255.

The IRA also authorized the Secretary of the Interior, at his or her discretion, to acquire interests in land, including by gift, "for the purpose of providing land for Indians." § 5, 25 U.S.C. 465. Such lands "shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired." § 5, 25 U.S.C. 465. The Secretary of the Interior is authorized to proclaim new Indian reservations

on lands acquired under this provision. § 7, 25 U.S.C. 467.

In addition, Section 16 of the IRA allowed certain Indians living on the same reservation to organize and form a Tribe. 48 Stat. 987, codified as amended at 25 U.S.C. 476. Section 19 of the Act defines the term "tribe" to refer to "any Indian tribe, organized band, pueblo, or the Indians residing on one reservation." 25 U.S.C. 479. "Indian" is defined to include, *inter alia*, "persons of one-half or more Indian blood." 25 U.S.C. 479.

2. a. The Jamul Indian Village is a small Indian Tribe located in Jamul, California, east of San Diego. Prior to the events at issue in this case, the Jamul Indians resided on private property owned by Lawrence and Donald Daley. The property was adjacent to an Indian graveyard encompassing 2.21 acres, which was owned by the Roman Catholic Bishop of Monterey and Los Angeles. C.A. E.R. 12.

b. During the 1970s, representatives of the Jamul Indian Village contacted the Bureau of Indian Affairs (BIA), an agency of the Department of the Interior, about obtaining federal recognition as an Indian Tribe. C.A. E.R. 284. BIA explained that the Village could seek recognition as a half-blood Indian community, living on the same reservation, pursuant to Sections 16 and 19 of the Indian Reorganization Act, 25 U.S.C. 476 and 479. C.A. E.R. 284-285. The Village decided to pursue that option and, on March 15, 1978, BIA notified the Jamul Indians that it had received a sufficient number of signatures of half-blood Jamul Indians "to proceed with the proposed acquisition through a donation to establish the Jamul Indian Reservation." App., *infra*, 20a; C.A. E.R. 128. On December 12, 1978, the Secretary of the Interior acquired, by gift from the

Daleys, the 4.66 acres on which the Jamul Indians resided. The grant deed conveyed the Parcel to

> [t]he United States of America in trust for such Jamul Indians of one-half degree or more Indian blood as the Secretary of the Interior may designate.

App., *infra*, 19a.

c. On May 9, 1981, the half-blood members of the Jamul Indian Village ratified a constitution, which formally established the Jamul Indian Village, governed by a tribal council. C.A. E.R. 410-419; see also *Rosales* v. *Sacramento Area Director, Bureau of Indian Affairs*, 32 I.B.I.A. 158, 160 (1998). Among other things, the constitution provided for tribal jurisdiction over all lands within the Village and granted the tribal council power to prevent the sale, disposition, lease or encumbrance of tribal lands and to administer tribal assets. C.A. E.R. 410, 414. The constitution was approved by the Department of the Interior on July 7, 1981. *Id.* at 420; *Rosales*, 32 I.B.I.A. at 159 ("Village was organized in 1981 under the Indian Reorganization Act."). On November 24, 1982, the Secretary of the Interior included the Jamul Indian Village on the list of federally recognized Tribes published in the *Federal Register*. 47 Fed. Reg. 53,132 (1982).[2] Petitioners do

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[2] During the 1990s, disputes arose about tribal membership and leadership in the Jamul Indian Village. Walter Rosales and Karen Toggery brought several administrative appeals to the Interior Board of Indian Appeals (IBIA) raising such issues. See *Rosales* v. *Pacific Reg'l Director, Bureau of Indian Affairs*, 39 I.B.I.A. 12 (2003); *County of San Diego* v. *Pacific Reg'l Director, Breau of Indian Affairs*, 37 I.B.I.A. 233 (2002); *Rosales* v. *Sacramento Area Director, Bureau of Indian Affairs*, 34 I.B.I.A. 125 (1999); *Rosales* v. *Sacramento Area Director, Bureau of Indian Affairs*, 34

not dispute that the Jamul Indian Village is a federally recognized Tribe. Pet. 5.

d. On February 5, 2001, BIA provided notice that the Jamul Indian Village had applied to have the United States acquire approximately 101 acres of property in trust for the Village. App., *infra*, 2a; C.A. E.R. 83-97; see also 67 Fed. Reg. 15,582 (2002). The accompanying application detailed the need for the land for purposes of housing, economic development, and other community needs. C.A. E.R. 87-88. The application explained that the Tribe planned to construct a casino/resort development on its existing property, and that the fifteen existing home sites on the Reservation would need to be moved to the newly acquired land. *Id.* at 88.

3. On May 30, 2001, petitioners filed a complaint for declaratory and injunctive relief against the United States and various federal agencies. The complaint alleged that upon the United States' acquisition of the Parcel, petitioners became entitled to it as an allotment under the IRA and the General Allotment Act of 1887.

I.B.I.A. 50 (1999); *Rosales* v. *Sacramento Area Director, Bureau of Indian Affairs*, 32 I.B.I.A. 158 (1998). Petitioners have sought district court review of some of those rulings in *Rosales* v. *United States*, No. 1:03CV01117 (D.D.C. filed May 23, 2003). Other federal court challenges to tribal leadership and gaming plans brought by Rosales or other Jamul Indians represented by Rosales' counsel in this case include *Jamul Indian Village* v. *Hunter*, No. 3:95CV00131 (S.D. Cal. voluntarily dismissed Sept. 30, 1996); *Rosales v. Townsend*, No. 3:97CV00769 (S.D. Cal. voluntarily dismissed Nov. 11, 1998); *Rosales* v. *United States*, No. 1:98-CV-00860-DGS (Fed. Cl. stayed Apr. 19, 2000); *Rosales* v. *Kean Argovitz Resorts, Inc.*, No. 3:00CV01910 (S.D. Cal. dismissed Apr. 18, 2001), aff'd, 35 Fed. Appx. 562 (9th Cir. 2002) (unpublished), cert. denied, 123 S. Ct. 437 (2002). All of those cases have been either stayed or voluntarily dismissed.